

REMARKS

Upon entry of the present amendment, claims 1-8 will remain pending in the above-identified application and stand ready for further action on the merits.

The amendments made herein to the claims do not introduce new matter into the application as originally filed. Moreover, the amendments find support in the application as originally filed. For example, support for newly added claims 6-7 occurs at page 6, lines 13-28, and support for newly added claim 8 occurs at page 9, lines 7-11.

Claim Rejections Under 35 USC § 102/103

Claims 1-4 have been rejected under 35 USC § 102(e) as being anticipated by Ashton et al. (WO 99/60969 A1). Claim 5 has been rejected under 35 USC § 103(a) as being obvious over Ashton et al. in view of Iskra (US 5,021,050). Reconsideration and withdrawal of each of these rejections is respectfully requested based upon the amendments made herein, as well as the following comments and considerations.

The Present Invention and Its Advantages

The present invention provides for an advantageous diaper, which possesses unexpectedly good properties relating to fitability and sustained fit, as evidenced by properties such as fit, ease of

putting on a wearer and resistance to sagging (see Table 1 at page 13 of the specification).

The advantages possessed by the claimed diapers result in part from Applicants' use of a plurality of body-surrounding elastic members that are disposed at side portions of the diaper, wherein the body-surrounding elastic members are not disposed in at least a center portion of a body-surrounding portion wherein an absorbent core exists, or alternatively, if said body surrounding elastic members are disposed in a center portion of a body-surrounding portion where said absorbent core exists, they are utilized in such a manner that elastic contractibility is not manifested thereby in at least the center portion of the diaper (see claim 1).

By utilizing such construction, fitability of the diaper is greatly improved, and at the same time bunching of the absorbent core is avoided, which produces other advantageous effects as discussed in the application.

Distinctions Over the Cited Art

In instant independent claim 1, it is positively recited as follows:

"...(3) the body-surrounding elastic members are each secured in their stretched state at the side portions of said body-surrounding portion to thereby manifest contractibility, with the body-surrounding elastic members being both disposed between and joined to an inner sheet and an outer sheet, and the body-surrounding

elastic members thereby forming gathers at the side portions of said body-surrounding portion".

The above recitation in claim 1 is nowhere taught, disclosed or otherwise rendered obvious by the cited Ashton et al. reference. Based on this fact, Applicants submit that it is impossible for the cited Ashton et al. '969 reference to either anticipate Applicants' claimed invention under 35 USC § 102(e) or render the same obvious under the provisions of 35 USC § 103(a).

In support of the above contention, Applicants note as follows.

First, nowhere in the cited Ashton et al. reference does there appear to be any disclosure and/or drawing of any "gathers" as recited in claim 1 (and its dependent claims 2-8).

Second, upon review of the cited Ashton et al. reference, for example at page 26, lines 17-30, and page 27, lines 12-28 (particularly lines 16 and 27), and in Figures 5-6 thereof, it can easily be seen that the side elastic member 70 taught by Ashton et al. does not produce gathers as recited in the instant claims. In support of this contention, Applicants quote from page 26 of the cited Ashton et al. reference, lines 17-22:

"Since the side elastic member 70 will be subjected to mechanical stretching before and during use, the first and second coverstock layers 122 and 126 preferably has a relatively high elongation at breaking, and are more preferably stretchable or elongatable, yet more preferably drawable (but not necessarily elastomeric),

without undue and preferably without any, tearing or ripping."

Accordingly, the above description from the cited Ashton et al. reference clearly teaches and provides for a high elongation of breaking for coverstock layers, and that they are "more preferably stretchable or elongatable, yet more preferably drawable (but not necessarily elastomeric)". Notably, such a requirement of the coverstock would not be needed if the Ashton et al. provided side elastic members (and/or articles) contained or formed gathers, because the presence of such gathers by themselves would allow for stretching. As such, the teachings of the cited Ashton et al. reference clearly support Applicants' contention that Ashton et al. do not teach or provide for an article having gathers therein.

Third, In the Ashton '969 reference, at page 20, line 28 and thereafter, the following description occurs:

"After the side elastic member 70 is operatively joined to the extended portion 72 of the inner barrier cuff 54 and the side extended portion 23C and 23D of the nonwoven outer cover 23, at least a portion of the resultant composite stretch laminate is then subjected to mechanical stretching sufficient to permanently elongate the non-elastic components which are, for example, the extended portion 72 of the inner barrier cuff 54 and the side extended portion 23C and 23D of the nonwoven outer cover. The composite stretch laminate is then allowed to return to its substantially untensioned condition. The extensible ear 46 and 48 is thus formed into "zero strain" stretch laminates. (Alternatively, the side elastic member 70 could be operatively joined in a

tensioned condition and then subjected to mechanical stretching.)" (emphasis added)

From the above disclosure in Ashton '969 beginning at page 20, it is clear that the "elastic member 70" is to be arranged or joined to an "extended portion", not to an "extensible portion". This means that where the elastic member is attached is already "extended" and is not able to "shrink", so that gathers are not going to be made or formed afterwards.

Likewise, in the above Aston '969 description at pages 20-21, between the set of parenthesis, it is stated that:

"Alternatively, the side elastic member 70 could be operatively joined in a tensioned condition and then subjected to mechanical stretching."

This alternative embodiment does not say what is to be joined, even though it makes clear that after the joining a subsequent mechanical stretching treatment is performed. Even so, the inner barrier cuff and nonwoven outer cover would no longer have an elastic feature after the subsequent mechanical stretching, and as a result any organization or structure of the inner barrier cuff and nonwoven outer cover would most likely be destroyed by the subsequent mechanical stretching step. More specifically, once the subsequent mechanical stretching step breaks the elastic features of the inner barrier cuff and nonwoven outer cover, they cannot

resume or regain their elastic properties to form gathers. Instead, the "ears" become extendable portions and are no longer able to "shrink" in size by force of the elastic members to thereby form "gathers".

Consequently, the words "extended portion" and "mechanical stretching" in the Ashton disclosure at pages 20-21 thereof, implicitly evidence that no gathers are formed in the absorbent member of the Ashton '969 reference.

Accordingly, it is impossible for the cited Ashton et al. '969 reference to anticipate or render obvious claim 1, or any of the remaining claims 2-8 that depend there from, since Ashton '969 does not teach or provide for each of the elements recited in the invention of claim 1, and provides no motivation to arrive at the same.

Forth, at page 27, lines 16 and 27 of the Ashton et al reference, it is clearly indicated that Ashton et al. wish to eliminate "creep", which would be inconsistent with any concurrent provision for the occurrence or formation of "gathers".

Fifth, upon review of Figures 5-6 of Ashton et al. it can be seen that the side-elastic members 70 are drawn out and pictured in a level (or even) fashion, indicating that gathers are not present.

Sixth, the provision of gathers on the center of a diaper, or on an absorbent core, would generally be thought to cause difficulty in putting the same on a wearer (baby), and would generally be thought to cause a leak of water if the absorbent core was very soft (e.g., especially if the absorbent core possessed a Taber stiffness of 0.5 to 20 gf.cm — as is recited in instant claim 5). However, the present Inventors have been able to provide an advantageous shorts-type disposable diaper having gathers at the side portions of a body-surrounding portion thereof, while at the same time overcoming such difficulties and leak properties (which is clearly shown in the instant specification, e.g., at page 13 in Table 1).

Seventh, by providing gathers in the present inventive shorts-type disposable diaper the Inventors have also been able to allow for evaporation of sweat from the wearer (baby), which is also advantageous.

With regard to pending claim 4, the Examiner's attention is directed to the fact that its limitations are absent from the cited Ashton '969 reference. Thus, while the Examiner may have previously contended that the Ashton et al. '969 reference teaches all of the elements of claim 4, at pages 37-38 thereof, especially at page 37, line 33, to page 38, line 3 thereof, such a contention is

incorrect. The reason is as follows. Only two things are cited in this section of Ashton '969, one is that the "waist elastomeric material is able to extend 100 %" and the other is that the force when the ear is extended to 50% is "40-130 g/inch". As such, one skilled in the art cannot determine from this disclosure of Ashton '969, which force is bigger between the force at the waist and the ear.

Concerning claim 5, Ashton '969 shows an absorbent article, which has Taber stiffness of less than 7. However there is no consideration to use a shorts type diaper and/or or any attention given to fitness or leakage for such a use. The cited secondary reference of Iskra '050 cannot cure these deficiencies. As such, even upon combining the disclosures of Ashton '969 and Iskra '050 one of ordinary skill in the art would in no way be motivated to arrive at the instant invention as recited in claim 5.

Absent such motivation in the cited art, the Examiner's outstanding rejection of claim 5 cannot be sustained.

CONCLUSION

Based upon the above considerations, it is submitted that each of the pending claims are currently patentable under the provisions of Title 35 of the United States Code. The Examiner is

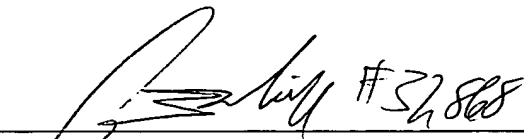
respectfully requested to issue a Notice of Allowance clearly indicating this fact.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey (Reg. No. 32,881) at the telephone number below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By  #32,881
John W. Bailey, #32,881

JWB/enm
0445-0302P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000